

Pollution Control Hearings Board

Pacific Coast Coal Company v. Department of Ecology

PCHB No. 07-139

Order Granting Summary Judgment to Ecology (Jan. 22, 2008)

Pacific Coast Coal Company (PCCC) appealed a \$2,000 civil penalty it received for violations of its NPDES permit. The violations resulted from discharges that Ecology contended exceeded the permit's monthly phosphorus limitation. PCCC's permit contained both a monthly average and a daily maximum limitation for discharges of phosphorus. PCCC tested, and was only required to test, its discharges one time per month. It was undisputed that one of its monthly samples exceeded the monthly average limitation but did not exceed the daily maximum discharge limitation. The primary issue on summary judgment was how to apply the monthly average limitation when PCCC had taken only one sample each month.

The Board held on summary judgment that when the permittee takes only one sample each month, that value becomes the monthly average. The Board concluded that this interpretation was necessary to give meaning to the monthly limitation standard. Further, the Board noted that PCCC was not prohibited from doing more than one sample each month, and that it had been informed in the past that this was how Ecology interpreted the relevant permit term.

The Board went on to find that the penalty amount was reasonable due to the potential for environmental harm, PCCC's history of violations, and the fact that the amount of the penalty was significantly lower than the statutorily authorized maximum amount.

Sylvia Ridge Developers, LLC v. Department of Ecology

PCHB No. 07-139

Order Granting Summary Judgment to Ecology (March 14, 2008)

Sylvia Ridge Developers, LLC (Sylvia Ridge) was issued two forest practices permits by the Department of Natural Resources (DNR) to conduct forestry operations. On one of the two permit applications, Sylvia Ridge indicated that it was planning to convert the harvest site from forest land to a different use. After the forestry operation was complete, an Ecology water quality inspector visited the site and made the determination that a Nation Pollutant Discharge Elimination System (NPDES) Construction Stormwater Permit was required. The inspector issued a noncompliance notification to Sylvia Ridge, which Sylvia Ridge appealed.

The issue on summary judgment was whether a noncompliance notification was appealable to the Board. The Board concluded that the noncompliance notification was not an agency order subject to appeal and, on this basis, granted summary judgment to Ecology and dismissed the appeal. The Board did not reach the merits of the underlying dispute as to whether an NPDES permit was required for the type of activities that were occurring on the site.

***Cornelius v. Washington State University & Department of Ecology,
PCHB No. 06-99
Findings of Fact, Conclusions of Law & Order (April 17, 2008)***

This appeal challenged Ecology's approval of water right changes to consolidate six WSU groundwater rights used to serve its Pullman campus water system. The 40 legal issues in the case involved many core principles of water law, and to a large extent, were based on the parties' conflicting theories related to the meaning, applicability, and constitutionality of the 2003 Municipal Water Law (2003 MWL).

The parties filed cross motions for summary judgment on all issues in the case. In its summary judgment ruling, the Board declined to decide the constitutional questions raised by the appellants, determining that they were tantamount to a facial challenge of the validity of the 2003 MWL. The Board nevertheless addressed the issues related to interpreting the terms of the 2003 MWL and applying them to the facts of the case. In doing so, the Board determined the WSU rights were rights for municipal supply purposes and resolved most issues in favor of WSU and Ecology. The Board concluded that Ecology properly determined WSU had not abandoned or relinquished any of the subject rights, and that its SEPA review was adequate even though it did not specifically consider the declining nature of the source aquifer. The Board also rejected appellants' theory that enlargement of a water right occurs whenever a change in the point of withdrawal allows a right holder to utilize a greater quantity of its existing right than it pumped from the original point of withdrawal. The Board further concluded that appellants' objection to WSU's use of some of the water to irrigate of a new golf course failed to put material facts in dispute regarding whether beneficial use requirements were met, reasoning that any alleged wasteful irrigation practices were more properly handled as an enforcement action.

The issues set over for hearing included whether the change to consolidate WSU's existing rights would impair Mr. Cornelius' water right or be detrimental to the public welfare, and whether WSU's rights were unlawfully enlarged by virtue of Ecology's tentative determination that one of the original rights was invalid.

After the hearing on the merits, the Board ruled that appellants failed to meet their burden of proof to establish that Ecology erred when it determined the subject water rights changes will not impair existing water rights. It concluded that a preponderance of the evidence and expert testimony showed that consolidation of WSU's existing water rights will not impair Mr. Cornelius' well or other water right holders. The Board also concluded that Ecology's approval of the change did not unlawfully enlarge WSU's water rights because the approved quantities were not legally dependent on the quantities in the invalid right.

A concurring/dissenting opinion agreed that appellants ultimately failed to demonstrate impairment but disagreed with the majority that Ecology had enough information to make such a determination at the time it approved the change applications. The concurring/dissenting opinion also set forth an alternative analysis of the circumstances under which Ecology must conduct a reasonable and feasible pumping lift analysis.

Appellants appealed the Board's decision in Whitman County Superior Court. They then sought discretionary review from the Court of Appeals on those issues not related to their constitutional challenge of the 2003 MWL, and the Board issued a certificate of appealability. Their request for direct review by the Court of Appeals was denied, so the case remains in Superior Court.

Pacific Topsoils, Inc., v. Department of Ecology,

PCHB No. 07-046 & 07-04

Findings of Fact, Conclusions of Law, and Order (June 12, 2008)

Pacific Topsoils is a soil processing company operating on Smith Island, which is located adjacent to the Snohomish River near its mouth at Puget Sound. The company appealed an \$88,000 penalty and a related administrative order requiring it to remove 12 acres of unauthorized fill and restore the affected wetlands to pre-fill conditions.

After receiving citizen complaints about activities at the site, both Snohomish County and Ecology investigated, observed ongoing fill activity, and initiated enforcement actions. Snohomish County ordered Pacific Topsoils to take immediate corrective action to remove the illegally placed fill and restore the area, including wetlands and buffers, and submit a critical areas study. Ecology also began working with Pacific Topsoils and advised its environmental director that the company must obtain all necessary permits and restore the site. When Pacific Topsoils failed to submit the requested analysis and undertake the required restoration, Ecology issued an administrative order requiring Pacific Topsoils to remove the unauthorized fill and restore the affected wetlands. At the same time, Ecology issued an \$88,000 civil penalty. Pacific Topsoils appealed the order and penalty, challenging both Ecology's authority to bring the enforcement action and Ecology's determinations that the fill area contained any wetlands.

Pacific Topsoils initially challenged Ecology's authority to regulate wetlands, and argued that this authority had been delegated to local governments in the Growth Management Act. Citing its 2005 decision in *Kariah v. Dep't of Ecology*, PCHB No. 05-021, the Board found no merit to the argument that Ecology lacks authority over wetlands. The Board reaffirmed its conclusion in *Kariah* that the Legislature has given Ecology broad authority to regulate wetlands and protect water quality in those wetlands. The Board again concluded that Ecology has jurisdiction to control and prevent the pollution of the state's waters under RCW 90.48.030, and that RCW 90.48.260 authorizes Ecology to implement and enforce all programs necessary to comply with the Clean Water Act. In accordance with the state's definition of pollution, as found in RCW 90.48.020, the Board concluded in this case that, by its filling activities, Pacific Topsoils had altered the physical properties of Smith Island wetland areas and, in doing so, had introduced pollution into the waters of the state.

The Board also found that the wetland assessment performed on the property established extensive regulated wetlands on the site that were well documented with appropriate methodologies and sound science, and that the presence of the wetlands should have been obvious to Pacific Topsoils. The Board concluded that Pacific Topsoils had intentionally filled these regulated wetlands for at least 11 days, which violated Washington water pollution control laws, Chapter 90.48 RCW, and Ecology's wetland regulations in WAC 173-22.

The Board further concluded that the \$88,000 penalty was reasonable in light of the scope and nature of the violation and the fact that the company had been penalized by Ecology before, and also by the EPA, for similar violations. Pacific Topsoils has appealed the Board's decision in Thurston County Superior Court.

Municipal Stormwater General Permit Consolidated Appeals

Puget Soundkeeper Alliance v. Department of Ecology and Intervenors (City of Seattle, King County, Port of Tacoma, Pacificorp, Puget Sound Energy, Washington Department of Transportation)

PCHB Nos. 07-021, 07-026, 07-027, 07-028, 07-029, 0-030, 07-037 (Phase I)

Puget Soundkeeper Alliance and Coalition of Governmental Entities v. Department of Ecology,

PCHB Nos. 07-022, 07-023 (Phase II)

Order on Dispositive Motions: Condition S.4 Phase I & II (April 2, 2008)

Findings of Fact, Conclusions of Law and Order: Condition S4 Phase I & II (August 7, 2008)

Order on Dispositive Motions: Phase I Municipal Stormwater Permit (April 8, 2008)

Findings of Fact, Conclusions of Law, and Order: Phase I (August 7, 2008)

These consolidated matters involved appeal of the Phase I and II Municipal Stormwater NPDES/State Waste Discharge permits. Several municipal entities subject to the permits, as well as environmental groups, utilities, and other interested intervenors filed appeals. The Board consolidated the appeals, and then bifurcated the consolidated case into two parts. In the first part, the Board heard motions, and then conducted a hearing on issues pertaining to one condition common to both the Phase I and Phase II permits (Condition S4). The issues related to the remainder of the Phase I permit proceeded separately, also through motion practice and an evidentiary hearing.

The Board held, on summary judgment regarding Condition S4, that state law requires discharges from regulated municipal storm sewer systems (MS4s) to comply with state water quality standards and that Ecology has considerable discretion in the manner, method and timing for requiring compliance with such standards. Following the evidentiary hearing on Condition S4, the Board concluded that the adaptive management approach adopted by Ecology to address water quality violations was a valid regulatory approach. However, the Board also determined that the process for implementing the adaptive management approach was deficient in a number of respects. The Board remanded the permit and directed specific modifications to the adaptive management condition in order to achieve the permit's intended purpose.

Also on summary judgment, the Board rejected various challenges to the permit brought by the Ports, and concluded that while Ecology has authority to require low impact development (LID) techniques in the permit, an evidentiary hearing was required to resolve whether the permit's LID provisions were adequate.

Following a full evidentiary hearing, the Board concluded the permit fails to require municipalities to control stormwater discharges to the maximum extent practicable, because it fails to require more extensive use of parcel and subdivision-level LID techniques in conjunction with conventional stormwater control techniques. To remedy this problem, the Board directed Ecology to make specific changes to the permit, including a modifying the condition related to new construction and redevelopment so that permittees must adopt enforceable ordinances requiring the use of LID measures where feasible. The Board concluded that permittees must provide information in their annual report to Ecology on the extent to which they are undertaking basin planning in their jurisdictions in order to assist with future phases of the permit.

The Board's final decision also addressed challenges to the permit's monitoring requirements, Stormwater Pollution Prevention Plans (SWPPPs), structural stormwater control (retrofit) requirements, and source control programs. The Board concluded the permit's monitoring provisions were a valid exercise of Ecology's technical expertise and discretion. The Board also concluded that Ecology should exempt from the SWPPP preparation requirement environmental mitigation sites owned by the Port of Tacoma. The Board directed Ecology to modify the permit's structural stormwater control program provisions to require permittees to describe the prioritization of their selected retrofit projects to avoid impermissible self regulation. Finally, the Board affirmed the source control program requirements without change, and concluded that the environmental groups and the utilities had failed to prove that any of the conditions of the permit violate the timing requirements of 33 U.S.C. § 1342 (p)(4)(A).

The environmental groups and the utilities appealed the Condition S4 decision to King County Superior Court. Shortly thereafter, the environmental groups resolved their issues with Ecology and withdrew their appeal. The utilities' appeal is ongoing. No party appealed the Board's final order on the remaining Phase I issues. The hearing on the Phase II permit remaining issues was recently concluded in late October, and the Board's decision is pending.

Shorelines Hearings Board

Marnin v. Mason County

SHB No. 07-021

Modified Findings of Fact, Conclusions of Law & Order (February 6, 2008)

The petitioners contested certain conditions Mason County placed on a shellfish operation they conducted at their property on Hood Canal. Mr. Marnin was concerned that he could not effectively cultivate shellfish on intertidal areas with the time-of-day limits and other restrictions the County placed on his activities.

The Board concluded the shellfish activities on site required a substantial development permit even though they were "permitted uses" in the area. The Board further found that the range of activities conducted by the applicants on the site fell within the definition of aquaculture. This included tending, sorting, and shipping live oysters reared on the site and received from third parties, to wholesale distributors. As aquaculture, the operation was subject to a substantial development permit, but not a conditional use permit. The Board modified a number of conditions to allow for necessary aquaculture practices during low tides, while attempting to minimize impacts on neighboring property owners. A concurring opinion agreed with the Board's conclusions on the permit conditions, but would have required a shoreline conditional use permit for activity related to oysters received from third parties, based on cottage industry provisions.

Vine Street Investors, Inc. v. City of Olympia

SHB No. 07-023

Order on Summary Judgment (March 13, 2008)

Vine Street Investors (Vine Street) applied for approval to build an office building and parking structure in downtown Olympia near Budd Bay. The City required Vine Street to apply for a shoreline substantial development permit because the project was partially within the 200 foot shoreline overlay. The City denied the permit on the basis that the proposed 65 foot building would block the views of the residents of a nearby senior apartment building. The site of the proposed project was vacant at the time of the application, and the apartment building occupants had existing views across this vacant lot of the shoreline boardwalk located along the east shore of Budd Inlet, a marina, boats, water and the opposite shore of Budd Inlet. It was uncontested that the proposed structure would block the existing shoreline views from the apartments, but that a 35 foot building in the same location would also block substantially the same views. The only issue raised in the appeal was whether the proposed application must be denied because of view obstruction of a substantial number of residences in violation of RCW 90.58.320, WAC 173-27-140(2), and/or the Thurston Region Shoreline Master Program.

On cross motions for summary judgment, the Board concluded as an initial matter that the apartment residents were on "areas adjoining" the shorelines, even though the properties did not physically touch the shorelines. On the key issue raised in the case, a majority of the Board ruled that the view protection afforded by RCW 90.58.320, WAC 173-27-140(2), and the shoreline master program applied only to shoreline views available above the height of a 35-foot building, even though existing shoreline views were available below that height due to the fact the lot was currently vacant. The Board based this conclusion on the fact that the Shoreline Management Act (SMA) allows a 35 foot building outright, without requiring any analysis of view blockage. The Board did not reach the question of whether the project was consistent with RCW 90.58.020 or whether it served an overriding public interest. Based on this ruling, the Board reversed the City's decision and remanded for issuance of the permit consistent with the decision.

The dissenting member was of the opinion that because the building obstructed the view of a substantial number of residences, the City could not issue the permit absent the City reaching the conclusion that it was in the public interest to do so. In the absence of any public interest analysis, the dissenting member would have upheld the City's decision to deny the permit.

***Rech v. San Juan Co. & Department of Ecology,
SHB No. 07-035***

Findings of Fact, Conclusions of Law & Order (June 12, 2008)

This case involved an appeal of San Juan County's denial of a variance permit to build a residence within the shoreline setback along a medium bluff above Fisherman Bay on Lopez Island, Washington. On summary judgment, the Board rejected petitioner's argument that Ecology had a regulatory duty or authority to independently review, and grant or deny a shoreline variance that had been denied by a local jurisdiction.

After a hearing on the merits, the Board affirmed San Juan County's denial of the variance on the basis that petitioners failed to demonstrate the necessary purpose for which variances are intended, that is to address extraordinary circumstances and unnecessary hardships. The Board concluded the petitioners' expectations of constructing a moderately sized vacation home on the property were not reasonable in light of the small and irregular lot size, their

knowledge of a need for a variance from one or more set-backs before they purchased the lot, and their actual or constructive knowledge of the added constraint presented by a pre-existing easement covering a significant portion of the available building envelope. The Board further concluded that although cumulative impacts were not a reason to deny the variance, petitioners failed to meet three of the variance criteria: reasonable use, hardship, and compatibility/public interest.

The County also argued, as an independent reason to deny the permit, that shoreline fortification would eventually be needed to protect the house (which was proposed to be set-back 25 feet from the top of the bluff) as a result of rising sea levels attributable to global climate change. Under the County's Shoreline Master Program, new development is prohibited if such fortification will be necessary in the foreseeable future. The Board noted that the issue had not been raised or analyzed at the time the county originally reviewed the application. It then concluded that while the County's expert provided more credible evidence regarding projected future bank erosion at the site, the analysis failed to consider geo-technical engineering options for the residence that would delay or eliminate the need for shoreline fortification. As a result, the Board did not rely on projected sea level rise as basis to deny the permit.

Petitioners have appealed the Board's decision in King County Superior Court.

Jarvis v. Kitsap County, Washington Department of Ecology, & the Suquamish Tribe,
SHB No. 08-001

Findings of Fact and Conclusions of Law and Order (July 7, 2008)

The petitioners challenged Kitsap County's approval of a shoreline substantial development permit for the Suquamish Indian Tribe to construct a 526-foot community dock on Puget Sound near Agate Passage in Suquamish, Washington. Agate Passage is classified as a shoreline of statewide significance. The upland portion of the structure would be located on tribal land, but the over-water portion would be located on tidelands owned by the Washington Department of Natural Resources and within the jurisdiction of Kitsap County's Shoreline Master Program. Suquamish Village is the Tribe's traditional center and is the location of various cultural sites and tribal facilities. The Tribe intends to utilize the proposed dock to expand cultural outreach by facilitating visitors who come to their museum, shops and other facilities that are both cultural and commercial, and also as a back-up tribal fishing boat catch off-loading facility as needed. The large size of the dock was necessary to accommodate the large tour boats that are expected to bring visitors from Seattle and other places across Puget Sound to visit local attractions, including the Tribe's nearby Clearwater Resort and Casino. The Tribe's stated intention is to allow the dock to be open to the public forever without charge.

The petitioners reside in houses along the top of a bluff adjacent to Suquamish Village where they enjoy panoramic views. They objected to the project on the basis that the dock's main purpose was to serve the casino and that it would be the cause of considerable disruption in the village due to traffic, noise, light and other impacts. They also objected to the project's view impacts, due to its size and scope.

The Board concluded that public access to the beach and water would be improved by the new dock, citing greater opportunities for use of the dock, including pedestrians' enjoyment of views from the beach and beach activities and expanded public boating opportunities due to the dock's capability to accommodate different types of watercraft. The Board concluded that these

improvements would enhance the public's use and recreational enjoyment of the shore not only for the local community but also by visitors. The Board recognized that designation of a shoreline as being of statewide significance can be based on a broad array of characteristics that benefit the public, and concluded that the planned activities associated with the dock were not inconsistent with its location on a shoreline of statewide significance. The Board concluded that the dock complied with Kitsap County's policies for docks and piers with regard to its location, size and length. The Board found that the dock would also fulfill the County's preference for cooperative use, thereby reducing requests for single-use docks up and down the shore.

The Board considered the petitioners' concerns about specific impacts and addressed them by finding it necessary to clarify one of the County's conditions, add an additional condition, and incorporate one condition the County had omitted by oversight. The Board modified the County's permit to prohibit the use of internal combustion engines on or at the dock at night, to encourage the use of electric loading vehicles to reduce noise, and to require the Tribe to implement a no-wake policy for vessels in the vicinity of the dock. With the addition of those new conditions to the permit, the Board affirmed the County's approval of the permit.

***Friends of the San Juans, v. San Juan County, Architects & Consultants, LLC, Chris Hughes, & Department of Ecology,
SHB No. 08-005
Findings of Fact and Conclusions of Law (August 25, 2008)***

Petitioners challenged a substantial development permit granted by San Juan County to Respondent Hughes for construction of a single-use dock on the tip of Pearl Island. Pearl Island is a small, heavily wooded island in the San Juans that has been entirely subdivided. It is located a short distance north of the port of Roche Harbor and is not served by the public ferry system. The island is circled by extensive eelgrass beds and lies within a shoreline of statewide significance.

The parties did not dispute that the project would result in a loss of eelgrass at the dock site. Hughes proposed an off-site mitigation project to compensate for the loss of eelgrass. The off-site mitigation would require removal of an illegal buoy that had scoured the seabed and replanting of eelgrass. When the permit was granted, the buoy removal project had already been completed and eelgrass had re-established itself at the off-site mitigation site without the need for additional plantings.

The Board considered that the proposed dock would be used for access to a lot that currently is unimproved with a single-family residence. Even if a house were built, the Board found that it would be used only on a seasonal basis and as a second home. Respondents' already have a personal dock on San Juan Island and they can quickly access Pearl Island through other means. The Board determined that alternative access to the property is possible and reasonable, via a barge that serves Pearl Island or through use of a buoy and a small craft.

The Board also concluded that there was a danger of cumulative negative effects. It found that the elimination of eelgrass at the dock site could contribute to the decline of the eelgrass bed around the island, which would represent a significant loss of an environmental resource contrary to the policies expressed in the Shoreline Management Act. The Board concluded that although the off-site mitigation plan would be an improvement at its location (and may satisfy the hydraulic permit approval requirements administered by the Department of Fish

& Wildlife), it would not replace the critical functions and values of the eelgrass at the dock site and therefore was not responsive to specific requirements of the San Juan County Shoreline Master Program. The Board found that neither the Shoreline Management Act nor the San Juan County SMP contains criteria or ascertainable standards by which to evaluate off-site mitigation. The Board found no evidence enabling it to evaluate whether the loss of eelgrass at the Pearl Island site was mitigated to any degree by the proposed off-site mitigation. The Board decided that the Respondents' desire for convenience did not outweigh the public's interest in preservation of a fragile off-shore environment. Concluding that the County's issuance of the permit did not adequately protect the shoreline environment, the Board denied the shoreline substantial development permit.

The project proponents have appealed the Board's decision to San Juan Superior Court.

McCoy v. Kitsap County

SHB No. 07-031

Findings of Fact, Conclusions of Law & Order (August 28, 2008)

Kitsap County proposed a road project to add four foot shoulders to each side of an existing, narrow roadway immediately adjacent to the Puget Sound shoreline. The project required a substantial development permit and a conditional use permit. Kitsap County and the Department of Ecology approved the permits, and project opponents appealed to the Board. The appealing parties contended the roadway violated local regulations because it allowed drainage to run into Puget Sound without stormwater treatment. The site is severely constrained by residential property on one side and bulkheaded shoreline on the other.

After an evidentiary hearing, the Board agreed with the county that standard types of stormwater collection and treatment are not possible given the physical configuration and flat gradient of the area. The existing roadway directs drainage from the road surface through roadside ditches and periodic culverts into Puget Sound without formal stormwater treatment. The Kitsap County project improves the stormwater situation by collecting a portion of the roadway stormwater, together with some adjacent offsite stormwater, and treating it before discharging it into Puget Sound. The anticipated impact of the project, as a whole, would improve the quality of stormwater entering Puget Sound. The Board concluded it was appropriate to consider the overall impact of the project rather than focusing separately on the direct discharge of stormwater from certain portions of the roadway. It also found the required stormwater mitigation more than offset the amount of impervious surface that would be added by the shoulder project. The Board further concluded the shoulder addition would serve the Shoreline Management Act's goals to maximize safe public access to the shoreline. Under the unique circumstances at this location, the Board affirmed the shoreline permit approvals. The case has been appealed to Thurston County Superior Court.

Rosellini v. Bellingham

SHB No. 08-003

Findings of Fact, Conclusions of Law & Order (July 15, 2008)

The Port of Bellingham proposed new buildings as part of a mixed use commercial development on the Squalicum Peninsula along the shoreline of Bellingham Bay. The City of

Bellingham approved of a shoreline substantial development permit (SDP) for the proposed structures. Nearby neighbors with views that would be impacted by the project appealed the permit approval based on fact that the building heights exceeded the height limitations placed on an earlier shoreline permit addressing the peninsula development and on impairment of their water views. SEPA claims challenged the scope of environmental review and the Port's failure to consider the impacts of nearby development of the former Georgia Pacific site. The Board found the City's scope of SEPA review was appropriate and rejected the argument that project site and a nearby large waterfront redevelopment site were so closely related as require evaluation in the same environmental document. The Board concluded the State Environmental Policy Act (SEPA) review of the project was adequate and not improper piecemealing.

The Board also found the City was not precluded from issuing the SDP by the terms of an earlier (1998) SDP and Planned Development Contract that limited further development on the peninsula to a height of 35 feet. The Board concluded that the prior permit and contract did not bar a new application because circumstances had changed since the 1998 permit decision and because the contract was subject to amendment by its terms.

The Board rejected the argument that the development violated state restrictions on view impairment contained in RCW 90.58.320 or the local restrictions contained in Sections 25 and 26 of the Bellingham Shoreline Master Program. While some view impacts would result from the construction, the impacts were minimal and did not amount to obstruction under the law. The development was consistent with the policies and regulations adopted by the City as part of its evolving vision for mixed use projects on the Bellingham waterfront.

A concurring/dissenting opinion would have required the City to establish view corridors for the area and re-evaluate the project in light of the view corridors.